IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 24922 of 2007(P)

AS.64/2007 of PRL.SUB COURT,TRIVANDRUM
OS.124/2005 of PRL.M.C.,TRIVANDRUM

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PETITIONER:

UMAIBA BEEVI, D/O. LATE MUHAMMED SALI
AGED 49 YRS., RESIDING AT T.C.46/286 (OLD T.C.48/06)
LULIMUTTU VILAKAMPURAYIDAM, PARUTHIKUZHI
MANACAUD P.O., THIRUVANANTHAPURAM

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENTS:

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1. SAKEER HUSSAIN, S/O. MEERASAHIB, AGED 36 YRS.
   RESIDING AT T.C.35/888, VALLAKKADAVU P.O.
   THIRUVANANTHAPURAM

2. S. RASHEED, S/O. LATE SAMLABHA, AGED 59 YRS.
   RESIDING AT T.C.41/2573, MANACAUD P.O.
   THIRUVANANTHAPURAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/8/07 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C).No.24922 OF 2007 p

Dated this the 16th August, 2007.

JUDGMENT

This writ petition is filed against the order of the learned Subordinate Judge in I.A.3424/07 in A.S.64/07. A.S.64/07 is filed against the judgment of the learned Munsiff in O.S.124/05 wherein the court held that the said suit is barred by the principles of res judicata. The present writ petitioner moved an application for stay of the proceedings in O.S.127/05 and the court below dismissed the said application. The learned counsel would contend that the order of the learned Munsiff holding that O.S.124/05 is barred by the principles of res judicata is not correct and should not have been rendered as a preliminary issue as Order XIV Rule 2(a) CPC does not envisage such a situation.

2. It is true that the question of res judicata may be a mixed question of law and facts and so often it is not a pure question of law. Only an issue of law which does not require any evidence to prove it can be treated as a preliminary issue. If the principles contained in Order XIV Rule 2(a) are satisfied and issue of res judicata is capable of being decided on the basis of undisputed facts emerging from the pleadings, it is the duty of the court to

decide the said issue as a preliminary issue. This appears to be a settled position of law so far as hearing of preliminary issue is concerned. I do not want to express much on the facts of this case at this stage because any observation or other thing made by me in the judgment may have an indirect bearing on the ultimate result in the appeal itself. I leave it by saying that I am prima facie satisfied that there is no ground to interfere with the order of the learned Subordinate Judge which is under challenge before me. But being a question of law learned Subordinate Judge should have disposed of the appeal itself instead of recording a finding on the interim application. Therefore, I direct the learned Subordinate Judge to expedite the matter if the notice is served on the other side, hear the appeal and dispose it of within a time frame of six weeks from today. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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